Approved Code No. 347—Supplement No. 45 Registry No. 1414-14

NATIONAL RECOVERY ADMINISTRATION

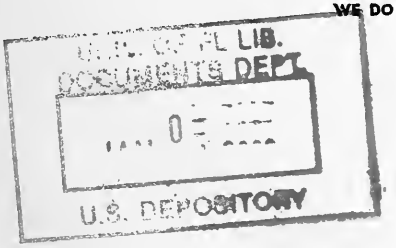
SUPPLEMENTARY CODE OF FAIR COMPETITION

FOR THE

COAL MINE LOADING MACHINE INDUSTRY

(A Division of the Machinery and Allied Products Industry)

AS APPROVED ON JANUARY 4, 1935



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Approved Code No. 347—Supplement No. 45

SUPPLEMENTARY CODE OF FAIR COMPETITION

FOR THE

COAL MINE LOADING MACHINE INDUSTRY

As Approved on January 4, 1935

ORDER

SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE COAL MINE LOADING MACHINE INDUSTRY

A DIVISION OF THE MACHINERY AND ALLIED PRODUCTS INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Supplemental Code of Fair Competition for the Coal Mine Loading Machine Industry, and hearing having been duly held thereon and the annexed report on said Supplemental Code, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859, dated September 27, 1934, and otherwise; does hereby incorporate by reference said annexed report and does find that said Supplemental Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and does hereby order that said Supplemental Code of Fair Competition be and it is hereby approved, subject to the following conditions:

(1) That the provisions of Section 7 of Article VI be and they are hereby stayed.

(2) That within sixty (60) days the Coal Mine Loading Machine Manufacturers' Association amends Section 3, Article IV of its By-Laws by deleting the words " and further, assents to the Code or Codes of the Industry ".

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

Approval recommended:

BARTON W. MURRAY,
Division Administrator.

WASHINGTON, D. C.,
January 4, 1935.

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REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Supplemental Code of Fair Competition for the Coal Mine Loading Machine Subdivision of the Machinery and Allied Products Industry, Public Hearing having been conducted thereon in Washington, D. C., September 25, 1934, in accordance with the provisions of Title I of the National Industrial Recovery Act.

GENERAL STATEMENT

The Coal Mine Loading Machine Subdivision, being truly representative of the manufacturers of the products defined in Article II of the Supplemental Code, has elected to formulate and submit a Supplemental Code of Fair Competition as provided in the second paragraph of Article I of the Code of Fair Competition for the Machinery and Allied Products Industry, approved by you on the seventeenth day of March, 1934.

The Subdivision includes the manufacturing and/or assembling for sale and selling by the manufacturer and/or assembler, for use in loading coal or other material underground in coal mines, mobile types of loading machines; including spare, repair and replacement parts thereof and supplies and/or equipment incident thereto when manufactured and/or sold by a manufacturer of such mobile types of loading machines.

Statistical material bearing on this Subdivision was obtained from the code application submitted by the Coal Mine Loading Machine Manufacturers' Association. The above-mentioned association claims to represent 90 per cent of the entire Subdivision measured by dollar volume of business.

Annual sales in 1933, according to the association, declined to less than one-third the 1929 level. In 1929 sales were reported at $1,811,900 and in 1933 at $573,000.

Estimates showing employment for the entire Subdivision, submitted by the association, indicate that employment declined from 160 in 1929 to 101 in 1933, or 36.8 per cent.

RÉSUMÉ OF SUPPLEMENTAL CODE

Article I states the purposes of the Supplemental Code.

Article II accurately defines specific terms applicable to the Subdivision as used in this Supplemental Code.

Article III provides for the adoption of the employment provisions of the National Industrial Recovery Code of the Machinery and Allied Products Industry, as approved by you, and as from time to time amended.

Article IV provides for the adoption of Articles II, VI and VIII of the National Industrial Recovery Code of the Machinery and Allied Products Industry, in accordance with the conditions of this Article governing their adoption.

Article V provides for the establishment of a Code Authority and defines its powers and duties.

Article VI sets forth trade practices for the Subdivision.

Article VII states that no provision of this Supplemental Code relating to pricing and marketing shall apply to export sales as defined by the term "Export" in this Article.

Article VIII provides that this Supplemental Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with Subsection (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under said Act. Provision is also made that modifications may be submitted by the Code Authority to the National Industrial Recovery Board for approval.

Article IX provides means for withdrawal of this Subdivision from the jurisdiction of the Basic Code Authority and its continuance under its own Code Authority.

Article X states that no provision of this Supplemental Code shall be so applied as to permit monopolies, or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

Article XI states the effective date of this Supplemental Code.

FINDINGS

The Assistant Deputy Administrator in his final report to the National Industrial Recovery Board on said Supplemental Code having found as herein set forth and on the basis of all the proceedings in this matter:

The National Industrial Recovery Board finds that:

(a) Said Supplemental Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Industry normally employs not more than 50,000 employees; and is not classified by the National Industrial Recovery Board as a major industry.

(c) The Supplemental Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including

without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Supplemental Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Supplemental Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Supplemental Code.

For these reasons, therefore, the National Industrial Recovery Board has approved this Supplemental Code.

For the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

JANUARY 4, 1935.

SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE COAL MINE LOADING MACHINE INDUSTRY

A DIVISION OF THE MACHINERY AND ALLIED PRODUCTS INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are established as a Supplemental Code for the Coal Mine Loading Machine Subdivision of the Machinery and Allied Products Industry, and together with the Code of Fair Competition for the Machinery and Allied Products Industry, shall be the standard of fair competition for this Subdivision, and shall be binding on every employer therein.

ARTICLE II—DEFINITIONS

"Applicant" means the Coal Mine Loading Machine Manufacturers' Association, a trade organization, all members of which are engaged in the manufacture for sale of the products of the Coal Mine Loading Machine Subdivision of the Machinery and Allied Products Industry.

"Industry" means the Machinery and Allied Products Industry, as defined in its Code of Fair Competition as approved by the President, and as such definition may from time to time be amended.

"Subdivision" means this Coal Mine Loading Machine Subdivision of the Machinery and Allied Products Industry as defined and set forth in Definition No. 48, Article II of the Code of Fair Competition for the Machinery and Allied Products Industry as follows:

"Coal Mine Loading Machine Subdivision means the manufacturing and/or assembling for sale and selling by the manufacturer and/or assembler for use in loading coal or other material underground in coal mines, mobile types of loading machines; including spare, repair and replacement parts thereof and supplies and/or equipment incident thereto when manufactured and/or sold by a manufacturer of such mobile types of loading machines."

"Code" means the Code of Fair Competition for the Machinery and Allied Products Industry as approved by the President, March 17, 1934, and as from time to time amended.

"Person" means a natural person, a partnership, a corporation, an association, a trust, a trustee, a trustee in bankruptcy, a receiver, or other entity.

"Employer" means any person engaged in this Subdivision either on his or its own behalf or as an employer of labor.

"The Act" means Title I of the National Industrial Recovery Act.

"The President" means the President of the United States.

"Board" means the National Industrial Recovery Board or its successor in office.

"Basic Code Authority" means the Code Authority for the Machinery and Allied Products Industry as constituted by the Code.

"Code Authority" means the Code Authority constituted for this Subdivision as provided by the Code and by this Supplemental Code.

Article III—Employment Provisions

The following Articles of the Code, viz: Article III, "Working Hours"; Article IV, "Wages"; and Article V, "General Labor Provisions", are hereby made a part of this Supplemental Code, with the same effect as if they were written into this Supplemental Code.

Article IV—Adoption of Other Provisions of Code

The following Articles of the Code, viz: Article II, "Definitions"; Article VI, "Administration", to the extent that they shall be applicable to this Supplemental Code as such or as it may hereafter be administered as an autonomous Code; Article VIII, "Modifications and Termination", are hereby made a part of this Supplemental Code, with the same effect as if they were written into this Supplemental Code.

Article V—Administration [1]

(a) A Code Authority for this Subdivision is hereby constituted to administer, supervise, and facilitate the enforcement of the Code and of this Supplemental Code in the manner and to the extent provided in the Code and in this Supplemental Code.

(b) During a period not to exceed sixty (60) days following the effective date and pending the election of the permanent Code Authority, the executive committee of the Applicant shall constitute a temporary Code Authority.

(c) The temporary Code Authority shall, by written notice sent by registered mail to all employers whose names have been obtained after reasonably diligent search, call a meeting of employers to be held within sixty (60) days after the effective date for the purpose of adopting procedural rules and regulations for the election, organization, and operation of the permanent Code Authority and electing a permanent Code Authority which shall consist of five (5) members, who shall be representative of employers, provided however, that no one employer shall be represented by more than one member. The Board may, in its discretion, appoint one additional member (without vote and without expense to the Subdivision). The permanent Code Authority so elected and appointed shall immediately supersede the temporary Code Authority.

(d) Any employer shall be entitled to vote at the election of the permanent Code Authority and at other meetings of employers and share in the benefits of the activities of Code Authority and may participate in any endeavors of Code Authority in the preparation

[1] See paragraph 2 (2) of order approving this Code.

of any amendments or revisions of, or additions or supplements to, this Supplemental Code by paying or agreeing to pay, as and when assessed, his proper pro rata share of the reasonable cost of administering this Supplemental Code as determined by Code Authority.

(e) Action by employers in any Subdivision meeting for the election of Code Authority shall be by vote of the employers entitled to vote as provided in Section (d) of this Article V, each such employer to have one vote only. Action by employers in any Subdivision meeting for the adoption of procedural rules, or the transaction of other business of the Subdivision under this Supplemental Code, except revisions or additions to the Supplemental Code, shall be by vote of the employers in the Subdivision who are entitled to vote thereat as provided in Section (d), Article V, of this Supplemental Code and are present in person or by proxy duly executed and filed with Code Authority; cast and computed in the manner provided in Section (d), Article VI, of the Code. All questions as to the number of votes which each employer shall be entitled to cast at any meeting of employers other than the meeting held to vote for the election of the permanent Code Authority shall be determined by Code Authority, in accordance with Section (d) Article VI of the Code.

(f) In order that the Code Authority shall at all times be truly representative of the Subdivision, and in other respects comply with the provisions of the Act, the Board may prescribe such hearings as it may deem proper; and thereafter if it shall find that the Code Authority is not truly representative, or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority.

(g) If formal complaint is made to Code Authority that provisions of this Supplemental Code have been violated by any employer, Code Authority shall proceed in accordance with the provisions of Section (h) of Article VI of the Code.

(h) The Code Authority may appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other Codes as may be related to the Subdivision for the purpose of formulating fair trade practices to govern the relationships between production and distribution employers under this Supplemental Code and under such others to the extent that such fair trade practices may be proposed to the Board as amendments to this Supplemental Code and such other codes.

(i) Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall submit to the National Industrial Recovery Board true copies of its articles of association, by-laws and regulations.

Article VI—Trade Practices

(1) No employer shall secretly, directly or indirectly, offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount, or excess allowance, whether in the form of money or otherwise, nor shall an employer secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class for the purpose of influencing a sale.

(2) No employer shall publish advertising (whether printed, radio, display, or of any other nature), which is misleading or inaccurate in any material particular, nor shall any employer in any way misrepresent any goods (including, but without limitation, its use, trade mark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

(3) No employer shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to have the effect of harassing competitors or intimidating their customers.

(4) So long as the maker of any product of this Subdivision bearing the maker's name or trade mark, which has required special designing, research or development expense (or his successor in business) continues to make and supply such spare, repair, and replacement parts therefor, no employer shall supply repair parts for such product of this Subdivision unless (a) the name of the maker of such copied nongenuine repair parts shall be plainly marked on each part (or if this is impracticable on the package or tag) so that the ultimate user is clearly informed by marking on such parts, packages, tags and in catalogues, price lists, quoted prices, advertisements or advertising literature of the manufacturer of such copied nongenuine parts that said parts were not made by the original maker of the products of the employer of this Subdivision.

(5) No employer shall furnish to any purchaser, and/or his agent, directly or indirectly, detailed shop drawings of the products of this Subdivision without filing a statement of such proposed transaction with the Code Authority which may approve or, with the approval of the Board, disapprove the transaction within ten (10) days by written notice to the employer.

(6) No employer shall induce or attempt to induce a breach or abandonment of contract covering the purchase or sale of the products of this Subdivision; provided, however, that nothing in this Section shall be construed to prohibit the attempt on the part of the owner of or licensee under any patent to induce a purchaser or future purchaser of any product which shall infringe said patent, to avoid such purchase.

(7) It shall be an unfair trade practice for any employer to engage in wilfully destructive price cutting for the purpose of injuring a competitor and where the effect may be substantially to lessen competition.[2]

Article VII—Sales for Export

The provisions of this Supplemental Code concerning pricing and marketing shall not apply to direct export sales of any product. A similar exemption may be granted by the Code Authority as to sales of any product destined ultimately for export. The term "export" shall include all shipments to all places without the several states of the United States and the District of Columbia; provided, however, that no shipment to any territory or possession of the United States

[2] Stayed—See paragraph 2 (1) of order approving this Code.

shall be considered an export when any employer is engaged in the Subdivision in such territory or possession.

Article VIII—Modifications and Termination

(a) As provided by Section 10 (b) of the Act, the President may from time to time cancel or modify any order, approval, license, rule or regulation issued under Title I of the Act.

(b) Any amendments, additions, revisions, or supplements of this Supplemental Code, proposed by Code Authority, and adopted by the concurring affirmative vote of employers entitled to cast two-thirds or more of all the votes that might be cast by all employers entitled to vote thereon, shall be in full force and effect upon approval by the President. The eligibility requirements, method and effect of such voting shall be as provided by Article V hereof.

(c) This Supplemental Code shall terminate June 16, 1935, or on such date prior thereto when the Act shall be repealed or the President shall, by proclamation, or the Congress shall, by joint resolution, direct that the emergency recognized by Section 1 of the Act has ended.

Article IX—Withdrawal

Upon thirty days' notice to the Basic Code Authority and to the Board, this Subdivision may, upon the concurring affirmative vote of employers within the said Subdivision entitled to cast two-thirds or more of all the votes that might be cast by all employers within the Subdivision entitled to vote thereon, withdraw from the jurisdiction of the Basic Code Authority. The eligibility of voters and the method and effect of such voting shall be in accordance with the provisions of Article V hereof. After and in the event such withdrawal is accomplished this Supplemental Code, together with the provisions of the Code shall become and be the sole code governing this Subdivision, and the Code Authority shall, for this Subdivision, become and be the sole Code Authority and shall perform all the functions with respect thereto.

Article X—Monopolies

Applicant imposes and shall impose no inequitable restrictions on membership therein. The Supplemental Code presented by it is not designed to promote monopoly, and shall not be so construed or applied as to oppress or eliminate small enterprises or discriminate against them, and is designed to effectuate the policy of the Act.

Article XI—Effective Date

This Supplemental Code shall become effective and binding on all persons engaged in the Subdivision on the eleventh day after its approval.

Approved Code No. 347—Supplement No. 45.
Registry No. 1414–14.

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